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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JoLynn McCabe, an individual)	Case No.: 3:21-cv-7236
)	
Plaintiff,)	<u>COMPLAINT FOR DAMAGES</u>
)	(42 U.S.C § 1983)
v.)	
)	
ALAMEDA COUNTY, a municipal)	
corporation; DOES 1-25, inclusive)	<u>JURY TRIAL DEMANDED</u>
)	
Defendants.)	
)	
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INTRODUCTION

1. On September 13, 2020, officers of the Fremont Police Department arrived at the JoLynn McCabe's home after her husband called 911 to request an ambulance for his wife. From her front yard, Mrs. McCabe told the officers that she did not need assistance. However, when she took a single step onto the sidewalk, the officers arrested her for public intoxication.

2. Mrs. McCabe was then transported to Santa Rita Jail. She began experiencing a panic attack and requested that yet-to-be-identified Deputies at the Jail give her a moment to calm down before being placed in the tiny holding cell. The Deputies ignored her cries for help, instead forcing her into the cell. Mrs. McCabe continued begging the Deputies not to put her in the cell, but never acted aggressively towards them nor made any threats.

3. A yet-to-be-identified Deputy then grabbed Mrs. McCabe and pushed her into the cement as part of a take-down maneuver. The Deputy's push caused Mrs. McCabe's head to slam into the cement, resulting in injuries to her head and face. Mrs. McCabe had significant bruising and swelling in both eye sockets, the bridge of her nose, and her forehead. The pictures below show Mrs. McCabe before and after the incident.



1 Defendants DOES 1 through 25 were responsible for the training, supervision and/or conduct of
2 the police officers and/or agents involved in the conduct alleged herein. Plaintiff alleges that
3 each of Defendants DOES 1 through 25 was also responsible for and caused the acts and injuries
4 alleged herein. Plaintiff will amend this Complaint to state the names and capacities of DOES 1
5 through 25, inclusive, when they have been ascertained.

6 9. Plaintiff filed a timely government tort claim with Defendant COUNTY, which
7 was rejected on or about March 19, 2021.

8
9 **FACTUAL ALLEGATIONS**

10 10. On the afternoon of September 13, 2020, Plaintiff was in her home in Fremont,
11 California, when her husband requested an ambulance for his wife. Instead of medical attention,
12 officers of the Fremont Police Department arrived to the scene.

13 11. Plaintiff went to the front yard of her home to see what the officers needed. She
14 was displaying signs of intoxication and was unaware that her husband had called 911, but was
15 not engaged in any illegal activity. The officers explained that they were there to conduct a
16 wellness check on her. Plaintiff declined, telling the officers that she did not need assistance.
17 However, Plaintiff eventually took one step onto the sidewalk. At that point, the officers arrested
18 her for public intoxication and transported her to the Alameda County Santa Rita Jail.

19 12. Yet-to-be-identified Deputies at the Santa Rita Jail booked Plaintiff and escorted
20 her to a holding cell. Plaintiff began suffering a panic attack as she approached the cell and asked
21 the Deputies to give her time to calm down. They refused, instead physically forcing her into the
22 cell. Plaintiff's only resistance during this entire interaction was her continued begging of the
23 Deputies not to put her in the cell; she did not act aggressively towards them or make threats.
24
25

1 13. Once they were inside the cell, a yet-to-be-identified Deputy performed a
 2 maneuver on Plaintiff that pushed her head into the cement. By doing this, the Deputy caused
 3 Plaintiff's head to slam into the cement in the cell. Plaintiff suffered severe bruising and swelling
 4 in both eye sockets, nose, and forehead.

5 14. The yet-to-be-identified Deputies then left Plaintiff in the cell by herself while her
 6 face continued to swell. Plaintiff repeatedly requested medical attention. The Deputies initially
 7 ignored Plaintiff's pleas for help. Eventually, they summoned medical staff.
 8

9 15. Plaintiff was then transported to a nearby hospital where she received medical
 10 care for her injuries. She was later discharged from the hospital and released from custody. The
 11 Alameda County Sheriff's Office subsequently declined to seek charges against Plaintiff.

12 **DAMAGES**

13 16. As a consequence of Defendants' violations of Plaintiff's federal civil rights
 14 under 42 U.S.C. §1983 and the Fourth Amendment, Plaintiff was physically, mentally,
 15 emotionally, and financially injured and damaged as a proximate result of Defendants' wrongful
 16 conduct.
 17

18 17. Plaintiff found it necessary to engage the services of private counsel to vindicate
 19 his rights under the law. Plaintiff is therefore entitled to an award of attorneys' fees and/or costs
 20 pursuant to statute(s) in the event that he is the prevailing party in this action under 42 U.S.C. §§
 21 1983 and 1988. Plaintiff is also entitled to punitive damages under 42 U.S.C. §§ 1983 and 1988.
 22

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **(Fourth Amendment – Excessive Force under 42 U.S.C. Section 1983)**

(PLAINTIFF individually against DOES 1-25)

1 18. Plaintiff hereby re-alleges and incorporates by reference each and every
2 paragraph of this Complaint.

3 19. Defendant Doe Deputy caused Plaintiff to suffer serious injuries when they
4 pushed her while she was in the holding cell, causing her to fall and hit her head on the cement
5 bench in the cell. Plaintiff, in the midst of suffering a panic attack, did not act aggressively
6 towards staff of Santa Rita Jail nor engage in any other conduct that suggested that Plaintiff
7 posed a threat to herself others. Defendant Doe Deputy's conduct was excessive and
8 unconstitutional, which violated both their official training and Plaintiff's constitutional rights
9 under the Fourth Amendment.
10

11 20. As a result of their misconduct, Defendants are liable for Plaintiffs' injuries
12 and/or damages.

13
14 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

15 **SECOND CAUSE OF ACTION**
16 **(Violation of CALIFORNIA CIVIL CODE § 52.1 "The Bane Act")**
17 *(PLAINTIFF individually against Defendants ALAMEDA COUNTY and DOES 1-25)*

18 21. Plaintiff hereby re-alleges and incorporates each and every paragraph in this
19 Complaint as fully set forth here.

20 22. Plaintiff hereby re-alleges and incorporates by reference each and every paragraph
21 of this Complaint.

22 23. Plaintiff brings this "Bane Act" claim individually for direct violation of his own
23 rights.
24
25

1 24. By their conduct described herein, Defendants and Does 1-50, acting in
2 concert/conspiracy, as described above, violated Plaintiff's rights under California
3 Civil Code §52.1, and the following clearly-established rights under the United
4 States Constitution and the California Constitution:

- 5 a. Plaintiff's right to be free from excessive and unreasonable force, as
6 secured by the Fourth Amendment to the United States Constitution and
7 by Article 1, § 13 of the California Constitution;
8

9 25. Excessive force, which violates the Fourth Amendment, also violates the Bane
10 Act. Defendants' use of unlawful force against Plaintiff, in and of itself, satisfies
11 the "by threat, intimidation, or coercion" requirement of the Bane Act.

12 26. Further, any volitional violation of rights done with reckless disregard for those
13 rights also satisfies the "by threat, intimidation, or coercion" requirement of the
14 Bane Act. All of Defendants' violations of duties and rights were volitional,
15 intentional acts, done with reckless disregard for Plaintiffs' rights; none was
16 accidental or merely negligent.
17

18 27. Alternatively, Defendants violated Plaintiff's rights by the following conduct
19 constituting threat, intimidation, or coercion that was above and beyond any lawful
20 seizure or use of force:

- 21 a. Threatening Plaintiff in the absence of any threat presented by Plaintiff or
22 any justification whatsoever;
23
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- b. Using deliberately reckless and provocative tactics to apprehend Plaintiff in violation of generally accepted law enforcement training and standards, and in violation of Plaintiff's rights;
- c. Defendants striking and/or physically accosting Plaintiff in the absence of any threat or need for such force;
- d. Threatening violence against Plaintiff, with the apparent ability to carry out such threats, in violation of Civ. Code § 52.1(j);
- e. Using excessive, unreasonable, and unjustified force against Plaintiff while they attempted to comply with the officers;
- f. Failing to intervene to stop, prevent, or report the unlawful seizure and use of excessive and unreasonable force by other officers;
- g. Violating multiple rights of Plaintiff;
- h. Arresting Plaintiff for no reason.
- i. Using force to intimidate, silence and/or punish Plaintiff as retaliation for Plaintiff exercising his First Amendment Right and/or dissuade him from lawfully filming the police.

28. Defendant COUNTY is vicariously liable, pursuant to California Government Code § 815.2, for the violation of rights by its employees and agents.

As a direct and proximate result of Defendants' violation of California Civil Code §52.1 and of Plaintiffs' rights under the United States and California Constitutions, Plaintiff sustained injuries and damages, and against all Defendants and is entitled to relief as set forth above, including punitive

1 damages against Defendants and Does 1-50, and including all damages allowed
2 by California Civil Code §§ 52, 52.1, and California law, not limited to costs,
3 attorneys fees, treble damages, and civil penalties WHEREFORE, Plaintiffs pray
4 for relief as hereinafter set forth.

5
6 **THIRD CAUSE OF ACTION**

7 **(Battery—Violation of CALIFORNIA PENAL CODE § 242)**

8 *(PLAINTIFF against Defendants ALAMEDA COUNTY and DOES 1-25)*

9 29. Plaintiff hereby re-alleges and incorporates each and every paragraph in this
10 Complaint as fully set forth here.

11 30. Defendant Doe Deputy, while working for the Alameda County Sheriff's
12 Office, and acting within the course and scope of their duties, intentionally struck and/or
13 injured Plaintiff..

14 31. As a result of Defendant Doe Deputy's conduct, Plaintiff suffered significant
15 injury to her nose, cheeks, eye sockets, and forehead. Defendant Doe Deputy did not have legal
16 justification for using force against Plaintiff. The use of force while carrying out their official
17 duties was unreasonable and thus constituted battery.

18 32. Defendant COUNTY is vicariously liable for the wrongful acts and omissions of
19 its employees and agents pursuant to Cal. Gov. Code section 815.2

20 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

21 **FOURTH CAUSE OF ACTION**

22 **(Negligence)**

23 *(PLAINTIFF against Defendant ALAMEDA COUNTY and DOES 1-25)*

24 33. Plaintiff hereby re-alleges and incorporates each and every paragraph in this
25 Complaint as fully set forth here.

1 34. The present action is brought pursuant to §§ 820 and 815.2 of the California
2 Government Code. Pursuant to § 820 of the California Government Code, as public employees,
3 Does 1-25 are liable for injuries caused by their acts or omissions to the same extent as a
4 private person. At all times mentioned herein, Does 1-25 were acting within the course and
5 scope of their employment and/or agency with Defendant County. As such, Defendant County
6 is liable in respondeat superior for the injuries caused by the acts and omissions of DOES 1-25
7 pursuant to § 815.2 of the California Government Code.

8 35. Defendant Doe Officers negligently and without due care shoved Plaintiff into
9 the cement , causing Plaintiff to hit her head. Plaintiff was injured as a proximate and direct
10 cause of the Defendants' negligent conduct.

11 36. Defendant Doe Officers' unjustified use of force on Plaintiff occurred as a result
12 of the absence of due care for the safety of others and constituted an unreasonable,
13 unwarranted, and excessive use of force and manifested an unreasonable risk of injury to
14 Plaintiffs.
15

16 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

17 **JURY DEMAND**

18 Plaintiffs hereby demand a jury trial in this action.

19 **PRAYER**

20 Wherefore, Plaintiffs pray for relief, as follows:

- 21 1. For general damages in a sum according to proof;
22 2. For special damages in a sum according to proof;
23 3. For punitive damages against DOES 1-25;
24 4. All other damages, penalties, costs, interest, and attorney fees as allowed by 42
25

U.S.C. §§ 1983 and 1988, Cal. Civil Code §§ 52 et seq., 52.1 and as otherwise

1 may be allowed by California and/or federal law against Defendant ALAMEDA
2 COUNTY and its employees;

3 5. For cost of suit herein incurred; and

4 6. For such other and further relief as the Court deems just and proper.

5 Date: September 17, 2021

Respectfully submitted,

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7 **POINTER & BUELNA, LLP**
8 **LAWYERS FOR THE PEOPLE**

9 /s/ Patrick Buelna

PATRICK M. BUELNA

ADANTÉ D. POINTER

10 COUNSEL FOR PLAINTIFFS
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